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U.S. Supreme Ct.

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1956

No. 765 MISC.

JOSEPH SHEFFIELD,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND BRIEF IN SUPPORT THEREOF

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. _____

JOSEPH SHEFFIELD,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner, Joseph Sheffield, who is now held in the Parish Jail for the Parish of Franklin, State of Louisiana, at Winnsboro, Louisiana, asks leave to file the attached Petition for a Writ of Certiorari to the Supreme Court of Louisiana without prepayment of costs and to proceed in forma pauperis.

The petitioner's affidavit in support of this petition is attached hereto.

EUGENE STANLEY,
Counsel for Petitioner

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1956

No. _____

JOSEPH SHEFFIELD,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

AFFIDAVIT IN SUPPORT OF PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, JOSEPH SHEFFIELD, being first duly sworn, according to law, depose and say:

That I am the petitioner in the above entitled cause, and in support of my application for leave to proceed without being required to prepay costs, state:

1. I am a citizen of the United States.

2. Because of my poverty I am unable to pay the cost of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress which I seek in said cause.

5. The nature of the said cause is briefly, as follows:

I was convicted of the crime of murder before the Fifth Judicial District Court for the Parish of Franklin, State of Louisiana, on Friday, March 23, 1956, and on May 25, 1956, after the overruling of a Motion for a new trial, I was sentenced to death.

I had previously been convicted and sentenced to death for the same crime, before the same Court, on July 3, 1953.

Subsequent to the first trial, a writ of habeas corpus was sued out in my behalf before the United States District Court for the Western District of Louisiana, under the No. 4821 - Civil-of the docket of the said Court, in which I contended that my said conviction and sentence was illegal and in violation of the Constitution and laws of the United States of America.

I was granted this writ of habeas corpus and the conviction and sentence annulled and the State of Louisiana ordered to grant me a new and fair trial within six months of the date of the finality of the said decree.

The action of Hon. Ben C. Dawkins, Jr., District Judge of the United States District Court for the Western District of Louisiana (See D.C. 126 F. Sup. 537, 5th Circ. 224 Fed. 2d, 280) was approved by the United States Circuit Court of Appeals, Fifth Circuit in case No. 15575, a certificate of

probable cause as the basis of appeal having been denied by the United States District Judge, as well as the United States Court of Appeals for the Fifth Circuit.

Subsequently, a writ of certiorari to the Supreme Court of the United States, applied for by the Respondent Sheriff was denied on December 12, 1955. (See 76 S. Ct. Rep. 217; 350 U.S. 922 - H. B. Waller, Sheriff of the Parish of Franklin, State of Louisiana vs. United States of America ex rel Joseph Sheffield).

From the present conviction and sentence in my second trial, I invoke the jurisdiction of the Supreme Court of the United States under Section 28, U.S.C. 1257, par. 3, because of the denial of rights, privileges and immunities claimed by me (1) under the Fourth, Fifth and Sixth Amendments to the Constitution of the United States, and (2) under the Fourteenth Amendment to the Constitution of the United States, all as set out in the accompanying petition for certiorari.

(Signed) Joseph Sheffield

Sworn to and subscribed before me this
15th day of May, 1957, at Winnsboro,
Parish of Franklin,
State of Louisiana

(Signed) J. R. DONNELL,
Clk. of Ct. and Ex. Off.
Notary Public

(SEAL)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1956

No. _____

JOSEPH SHEFFIELD,
Petitioner,

versus

STATE OF LOUISIANA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND BRIEF IN SUPPORT THEREOF

To The Honorable The Chief Justice and
The Honorables The Associate Justices of
The Supreme Court of the United States:

Joseph Sheffield, petitioner, prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of Louisiana, in the case entitled State of Louisiana vs. Joseph Sheffield, No. 43126 of the docket of the said Court, entered on January 21, 1957.

OPINIONS BELOW

The Opinion of the Supreme Court of Louisiana, a certified copy of which is annexed hereto, has been reported in the Southern Reporter Advance Sheets, Vol. 93 So. 2d No. 4, April 25, 1957, page 691.

JURISDICTION

The Judgment of the Supreme Court of Louisiana was entered on January 21, 1957 and a rehearing denied on February 25, 1957. An extension of time within which to file in this Court a petition for a writ of certiorari was applied for on February 25, 1957 and was granted February 26, 1957.

Under the terms of this extension, petitioner was allowed ninety days (until May 27, 1957) to file his application for a writ of certiorari. Certiorari is applied for within ninety days.

The jurisdiction of this Court is invoked under Section 28 U.S.C.A. 1257 (Par. 3) because of rights, privileges and immunities claimed by petitioner (1) under the Fourth, Fifth and Sixth Amendments to the Constitution of the United States and (2) under the Fourteenth Amendment to the Constitution of the United States and also under Sections 2 and 9 of Article I of the Constitution of the State of Louisiana.

Petitioner was convicted of the crime of murder before the Fifth Judicial District Court for the Parish of Franklin,

State of Louisiana, and on May 25, 1956, was sentenced by that Court to die in the electric chair.

Numerous errors of a serious nature were committed during the course of the trial, as will be more fully set out hereafter.

SUMMARY STATEMENT OF MATTERS INVOLVED

Petitioner, Joseph Sheffield, was indicted on June 17, 1953, by the Grand Jury of the Parish of Franklin, Louisiana, for the murder of one John L. Waller. After the appointment by the Court of counsel to represent him, his trial was set for June 29, 1953, before the Fifth Judicial District Court for the Parish of Franklin, State of Louisiana. The jury returned a verdict of "Guilty as Charged" on July 3, 1953, and petitioner was sentenced to death.

No suspensive appeal was taken from the said judgment and sentence to the Supreme Court of the State of Louisiana by counsel appointed by the Court to represent petitioner.

Subsequently, a complaint having been made to the Louisiana State Bar Association that petitioner had not been properly represented and defended by the attorneys appointed by the Court to represent him, and was about to be deprived of his life without due process of law, under both Article 1, Sections 2, 6 and 9 of the Constitution of the State of Louisiana and Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, other counsel, among them a former President of the Louisiana State Bar Association, volunteered to represent petitioner.

Although the legal delays in which a suspensive appeal could be taken in the said case to the Supreme Court of the State of Louisiana had been permitted to expire by his former Court appointed counsel, new counsel who had volunteered to represent petitioner, unsuccessfully attempted, by writ of certiorari, to have the matter reviewed by the Supreme Court of the State of Louisiana.

Upon denial of this writ by the Supreme Court of Louisiana, petitioner filed in the Honorable the Supreme Court of the United States, at the October, 1954 Term, under the No. 53 Misc. a petition for writ of certiorari to the Supreme Court of the State of Louisiana, which was denied by this Honorable Court on October 14, 1954, without prejudice to the right of petitioner to petition for a writ of habeas corpus in the proper United States District Court. (348 U.S. 850, 75 Supreme Court Reporter 67).

Petitioner, through the new counsel who had volunteered to represent him, then applied for a writ of habeas corpus to the United States District Court for the Western District of Louisiana, Monroe Division, Hon. Ben C. Dawkins, Jr., Judge, to test the validity of petitioner's conviction and sentence.

After a four day hearing on the said writ, the Hon. Ben C. Dawkins, Jr., Judge of the said Court, on January 10, 1955, rendered a judgment in favor of your petitioner and against Hiram B. Waller, Sheriff of the Parish of Franklin, the respondent who held your petitioner in custody, granting your petitioner the writ of habeas corpus theretofore issued, and maintaining the same.

The said Hon. Ben C. Dawkins, Jr., District Judge, aforesaid, further ordered, adjudged and decreed that unless the State of Louisiana granted your petitioner another trial (a fair trial) within six months from the date of the said judgment (by July 10, 1955) that he, the said Hon. Ben C. Dawkins, Jr., United States District Judge, aforesaid, would then enter an order commanding the said Hiram B. Waller, Sheriff of the Parish of Franklin, State of Louisiana, respondent, to discharge and release your relator from custody. (See D.C. 126 F. Sup. 537, 5th Circ. 224, Fed. 2d 280).

The Honorable Ben C. Dawkins, Jr., United States District Judge, aforesaid, in his reasons for judgment, held that your petitioner had not received due process of law and that due process of law had been denied your petitioner at every stage of the proceeding, and further stated in said reasons, that if he were to allow your petitioner's conviction and sentence to stand, he would be compounding violation of petitioner's constitutional rights, etc. (See Reasons for Judgment of Hon. Ben C. Dawkins, Jr., United States District Judge, aforesaid, pages 673 to 689, Vol. 3 of the Transcript of the Record of the United States Court of Appeals, No. 15,575, filed with and made a part of this application.)

That the said Hiram B. Waller, Respondent, sheriff, aforesaid, (See Vol. 3, page 692 of the Transcript of the Record of the United States Court of Appeals, 5th Circuit, Case No. 15,575), gave notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the said judgment.

After securing various delays within which to perfect the transcript of appeal, on April 19, 1955, the said Sheriff,

respondent, made application to the said Hon. Ben C. Dawkins, Jr., United States District Judge, aforesaid, for a certificate of probable cause, as required by U.S.C.A., Article 28, Section 2253 (See Vol. 4, Transcript of Record, United States Court of Appeals, 5th Circuit, No. 15,575, pages 1 to 69 inclusive).

Objection and resistance to the petition of said Hiram B. Waller, Sheriff, respondent, for a certificate of probable cause was made by your petitioner, through counsel (See Vol. 4, Transcript of the United States Court of Appeals, 5th Circuit, pages 70-72) and Respondent's application for such certificate was denied by the Hon. Ben C. Dawkins, Jr., United States District Judge, aforesaid (See Vol. 4, Transcript of Record of United States Court of Appeals, 5th Circuit, No. 15,575, pages 72 and 73).

Subsequently, the said Hiram B. Waller, Sheriff, respondent, made application to the Judges of the United States Circuit Court of Appeals for the Fifth Circuit (in case No. 15,575) for a certificate of probable cause, which was denied by the said Court, on the 31st day of May, 1955.

Whereupon, the said Hiram B. Waller, Sheriff, respondent, applied to this Honorable Court at the October Term, 1955, under the No. 307 Misc. for a writ of certiorari, which application was denied by this Honorable Court on December 12, 1955 (See 76 Supreme Court Reporter 217; 350 U.S. 922 - H. B. Waller, Sheriff of the Parish of Franklin, State of Louisiana vs. United States of America, ex rel Joseph Sheffield).

At no time was the Judgment in favor of your petitioner in the said habeas corpus proceeding stayed or suspended by any Court.

On January 12, 1956 (one year and two days after the rendering of the Judgment in the habeas corpus proceeding by Judge Dawkins, on January 10, 1955) and six months and two days after the expiration of the time (July 10, 1955) within which the State of Louisiana had been ordered by Judge Dawkins to retry petitioner or release him from custody, the said Hiram B. Waller, Sheriff, respondent, applied to the said District Judge for an extension of time within which to retry your petitioner.

The said Hon. Ben C. Dawkins, Jr., District Judge, aforesaid, over the objection of your petitioner, issued an order amending the original judgment in the said habeas corpus proceeding and granted the State of Louisiana an extension of ninety days, commencing January 18, 1956, within which to retry your petitioner. (See Vol. 1 of Transcript in Louisiana Supreme Court, page 59).

Proper Bill of Exceptions to the action of the said Hon. Ben C. Dawkins, Jr., District Judge, aforesaid, in so amending his said judgment was reserved on behalf of your petitioner.

On January 20, 1956, the State of Louisiana proceeded to set petitioner's case for trial for the second time.

Your petitioner, being penniless and without means to employ counsel, Mr. Warren Hunt, Attorney at Law, of Rayville, Louisiana, was appointed by the Court petitioner's

chief counsel, and Mr. Joseph S. Guerriero, Attorney at Law, of Monroe, La., was appointed associate counsel.

After due arraignment and the entry of a plea of not guilty, the case was fixed for March 19, 1956 (See La. S. Ct. Tp. Vol. 1, page 7).

Petitioner, through counsel appointed to represent him, filed a Motion for a change of venue, which was heard on March 9, 1956 and denied by the Court on March 10, 1956 (See Louisiana Supreme Court Transcript, Vol. 1, pages 8 and 9).

The testimony of the witnesses offered by petitioner, through appointed counsel, in support of this Motion for a change of venue will be found on pages 62 to 186 inclusive of Louisiana Supreme Court Transcript, Vol. 1.

Proper Bill of Exceptions was reserved to the action of the Trial Judge in denying petitioner's application for a change of venue (See Louisiana Supreme Court Transcript, Vol. 1, page 60 — Bill of Exceptions No. 1).

The Motion for a change of venue and all of the evidence heard in support thereof was made a part of the said Bill of Exceptions.

On March 17, 1956, petitioner, through appointed counsel, filed a plea to the jurisdiction and Demurrer (See Louisiana Supreme Court Transcript, Vol. 1, page 35) wherein petitioner set out a recital of the facts concerning the issuance and maintaining of petitioner's application for habeas corpus before the United States District Court for the Western Dis-

trict of Louisiana, Monroe Division, and wherein petitioner averred that under the judgment rendered in the said habeas corpus proceeding, the State of Louisiana was ordered to retry your petitioner within six months from the finality of the said decree or to release your petitioner from custody.

Petitioner averred in said plea to the jurisdiction and Demurrer that the final date within which the finality of said decree became enforceable was July 10, 1955 and that the State of Louisiana, not having retried your petitioner as directed in the said judgment, petitioner was entitled to be released from custody by the said Sheriff, respondent.

All the facts and circumstances surrounding the attempt on the part of the Sheriff, respondent in the said habeas corpus proceeding to have the judgment of Hon. Ben C. Dawkins, Jr., District Judge of the United States District Court for the Western District of Louisiana reviewed and set aside are set out in the plea to the jurisdiction and Demurrer (See Louisiana Supreme Court Transcript, Vol. 1, pages 35 to 40 inclusive).

The right of said Hon. Ben C. Dawkins, Jr. to amend his judgment of January 10, 1955, granting your petitioner a writ of habeas corpus, after the same *had become executory and final on July 10, 1955*, and to allow the State of Louisiana ninety days additional from January 12, 1956 within which to retry your petitioner was specifically challenged and objected to, (See Louisiana Supreme Court Transcript, Vol. 1, pages 39 and 40) and proper Bill of Exceptions reserved (See Louisiana Supreme Court Transcript, Vol. 1, page 11).

Attached to and made a part of the said plea to the jurisdiction and Demurrer (See page 40 of Vol. 1 of the Louisiana Supreme Court Transcript) is a duly certified copy of all of the proceedings had in the said habeas corpus proceeding No. 4821 of the docket of the United States District Court for the Western District of Louisiana, Monroe Division (No. 15,575 of the docket of the United States Circuit Court of Appeals, 5th Circ.) which is attached to and made a part of this application.

After the denial of a Motion for continuance, petitioner was placed on trial for the second time on March 19, 1956 and after a five day trial the jury returned a verdict of guilty as charged against your petitioner, and on Friday, May 25, 1956 petitioner was sentenced to death (See La. Sup. Court Trans., Vol. 1, pages 11 to 18 inclusive).

After the signing of some eleven Bills of Exception presented to the Court by counsel appointed for the petitioner, petitioner's counsel moved for a suspensive appeal on behalf of the petitioner, to the Supreme Court of Louisiana (See Louisiana Supreme Court Transcript, Vol. 1, page 18).

The Transcript in petitioner's appeal to the Supreme Court of Louisiana from his conviction and sentence was filed in that Court under the No. 43126, on July 30, 1956 and the appeal was set for hearing on December 14, 1956.

When the case came up for a hearing in the Supreme Court on December 14, 1956, Mr. Warren Hunt, petitioner's chief counsel, failed to make any appearance on behalf of petitioner.

Petitioner then learned that Mr. Hunt had been charged by Information before the United States District Court for the Eastern District of Louisiana (on February 16, 1956) under the No. 26,026 - Criminal - with failure to file an income tax return for the year 1953, in violation of Title 26, Section 145 (a) U.S.C.

Petitioner then learned that the said Warren Hunt, petitioner's chief counsel, had been arraigned before the United States District Court for the Eastern District of Louisiana, on October 24, 1956 and had pleaded guilty to the said charge and that it was adjudicated by the said Court that the said Warren Hunt be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a period of one year and fined the sum of ten thousand dollars, said fine to be paid by January 2, 1957 and the said sentence to begin on January 2, 1957.

That the said sentence was amended on January 7, 1957 so as to reduce the sentence from one year to six months, the said fine of ten thousand dollars to be paid by February 1, 1957 and said sentence to begin on February 1, 1957.

Petitioner attaches hereto and makes part hereof a certified copy of said Information as well as certified copies of the various amendments to the sentence herein-above referred to.

Petitioner has been informed and therefore alleges that Mr. Hunt, petitioner's chief counsel, is now serving the sentence imposed on him by the said Court in the above matter.

When petitioner's appeal came up for a hearing in the Supreme Court of Louisiana, Mr. Joseph Guerriero, attorney-at-law, who had been appointed associate counsel to Mr. Hunt to represent petitioner, attempted to address the Court.

Mr. Harry N. Anders, District Attorney for the Fifth Judicial District, who had prosecuted petitioner, objected to any argument being made by Mr. Guerriero for the reason that no printed brief had been filed on behalf of petitioner or served on opposing counsel fourteen days preceding the date on which the appeal was to be heard, as required by the Rules of the Louisiana Supreme Court.

Mr. Guerriero, counsel appointed by the Court to assist Mr. Hunt, then informed the Court that he had just received that morning from Mr. Hunt a few copies of a typewritten brief which he asked permission to present to the Court and also requested permission to argue the case on behalf of petitioner.

His Honor, Chief Justice Fournet of the Louisiana Supreme Court, stated that inasmuch as the appeal involved a capital case, the Court would relax the rules and permit the filing of a typewritten brief and permit Mr. Guerriero to argue the case.

Later, on January 21, 1957, the Louisiana Supreme Court affirmed the judgment and sentence of the lower Court and denied an application for a rehearing filed on behalf of your petitioner by Mr. Joseph Guerriero, associate counsel, on February 25, 1957.

Petitioner alleges that he has exhausted all legal remedies available to him under the laws of the State of Louisiana.

SPECIFICATION OF ERRORS

We respectfully contend that the Supreme Court of Louisiana erred:

I.

a. In refusing to find that petitioner's constitutional rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States of America had been violated because of the action of the trial judge in refusing to grant petitioner a change of venue, to which petitioner was entitled under Louisiana Revised Statutes R.S. 15:290 to 15:293.

b. In refusing to set aside and annul the action of the trial judge in overruling the Plea to the Jurisdiction and Demurrer filed on behalf of petitioner, wherein petitioner claimed that because of laches on the part of officials of the State of Louisiana in failing to retry your petitioner within six months from the finality of the decree of the United States District Judge granting petitioner the writ of habeas corpus, that the said State of Louisiana had lost jurisdiction to retry your petitioner.

c. That the Supreme Court of the State of Louisiana erred in refusing to set aside the action of the trial judge in over-

ruling the challenge for cause filed by petitioner to the prospective juror, Roy A. Stewart who stated on his voir dire examination that he had formed an opinion as to the guilt or innocence of the defendant, such opinion, petitioner contending, rendering it impossible for the said juror, Roy A. Stewart, to be a fair and impartial juror.

d. That the Supreme Court of Louisiana erred in refusing to set aside the action of the trial judge in denying the challenge for cause filed by petitioner to the selection of the prospective juror, Walter Huff, who on his voir dire examination had testified that he had known defendant and the deceased for about ten or twelve years, but who also stated that he had formed some opinion as to the guilt or innocence of the defendant but, that while such opinion was not of a fixed nature and would yield to evidence, that the said prospective juror was a personal friend of Sheriff Hiram Waller, brother of the deceased, etc.

e. That the Louisiana Supreme Court erred in refusing to set aside the action of the trial judge in overruling the challenge for cause filed by petitioner to the prospective juror, Jesse J. Hatton, who, on his voir dire examination, testified that he had formed an opinion as to the guilt or innocence of your petitioner, the main complaint against the selection of the said Jesse J. Hatton being that before it was known that he would be a prospective juror, he had been summoned by the State and testified on the trial of the motion for a change of venue to the effect that in his opinion, your petitioner could secure a fair and impartial trial in the Parish of Franklin.

Your petitioner alleges that the said prospective juror, Jesse J. Hatton, because of his previous testimony that your petitioner could secure a fair and impartial trial in the Parish of Franklin, had disqualified himself to serve as a juror in this case for the reason that he would be interested in vindicating his previous statement that petitioner could secure a fair and impartial trial in the Parish of Franklin, given by him when he had been interrogated on the hearing of petitioner's motion for a change of venue.

That a prospective juror who had previously been summoned by the State to testify for the State on a hearing of a motion for a change of venue and who had testified, as this prospective juror had testified, from the very nature of the circumstances surrounding the giving of such testimony, had shown himself to be an interested party, and in such a frame of mind as to make it impossible for him to listen to the testimony with a free and unbiased mind, as he had already in his own opinion, prejudged the case, and could not give petitioner a fair and impartial trial.

That petitioner was compelled to accept the said jurors, Roy A. Stewart, Walter Huff and Jesse J. Hatton, as jurors on the trial of this case, for the reason that petitioner had exhausted the number of peremptory challenges allowed him under the laws of the State of Louisiana.

II.

THAT PETITIONER WAS DENIED HIS CONSTITUTIONAL RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA BECAUSE THE CHIEF COUNSEL APPOINTED TO REPRESENT PETITIONER, MR. WARREN HUNT, DID NOT PROPERLY AND EFFECTIVELY REPRESENT PETITIONER, FOR THE FOLLOWING REASONS:

1. That the facts in this case show that at the time of the tragic occurrence between petitioner and the deceased (see Transcript of Record, Vol. No. 3, page 684, U.S. Court of Appeals, 5th Cir. No. 15,575, containing the testimony heard on the trial of the habeas corpus proceeding before the United States District Court for the Western District of Louisiana) the deceased was attempting to make an unlawful arrest of petitioner, for a misdemeanor committed outside of his presence, without a warrant.

2. That petitioner's chief counsel, Mr. Warren Hunt, abandoned petitioner on the hearing of his case before the Louisiana Supreme Court on December 14, 1956, Mr. Hunt having been charged by Information on October 16, 1956, before the United States District Court for the Eastern District of Louisiana, New Orleans Division, with a violation of Title 26 U.S.C. 145 (a) with failing to file an income tax return for the year 1953, and pleaded guilty to the said charge on October 24, 1956 and was sentenced by the trial judge to serve one year in a correctional institution to be designated by the Attorney General of the United States of America, and fined the sum of ten thousand dollars.

That the said sentence was subsequently reduced to six months, but the fine of ten thousand dollars permitted to stand, and that the said Mr. Warren Hunt commenced to serve his said sentence on February 1, 1957, and so far as petitioner knows, is still serving the said sentence.

III.

THE STATE OF LOUISIANA, BY THE LACHES OF ITS PUBLIC OFFICIALS, LOST THE RIGHT TO RETRY PETITIONER WHEN IT PERMITTED MORE THAN SIX MONTHS TO ELAPSE FROM THE FINALITY OF THE DECREE OF JUDGE DAWKINS, U.S. DISTRICT JUDGE, GRANTING PETITIONER THE WRIT OF HABEAS CORPUS.

IV.

DENIAL OF CONSTITUTIONAL RIGHTS BECAUSE OF INCOMPLETE RECORD.

ARGUMENT

Petitioner being absolutely penniless, the cost of the present application must be borne by counsel whose name is affixed hereto, who is serving petitioner without compensation.

Being actuated by a sense of public duty toward a penniless defendant, so that this defendant can be given the benefit of every legal review to which he is entitled, counsel respectfully submits this application.

The testimony offered on the hearing of the motion for a change of venue will be found in the transcript at the

pages indicated in the statement of the case at the commencement of the brief.

Inasmuch as the entire record in the habeas corpus proceeding before Honorable Ben C. Dawkins, Jr., United States District Judge for the Western District of Louisiana, was offered in evidence on the trial of this motion for a change of venue, petitioner respectfully submits that in order to evaluate the evidence on this point the Court should consider not only the evidence offered in the lower Court, but the evidence heard before the District Court in the previous habeas corpus proceeding.

We are unable for lack of funds to analyze this testimony in detail. However, we respectfully submit that the same prejudice which originally existed as shown in Judge Dawkins' reason for judgment (see Transcript of Record U.S. Circuit Court of Appeals, Vol. 3, page 673 et seq.) also existed at the time of the motion for a change of venue.

True, considerable time had passed since the trial of the habeas corpus before Judge Dawkins and the hearing of the motion for a change of venue.

However, as is shown by the record, there is no doubt that the action of the United States District Court Judge in setting aside the conviction, and the affirmation of this judgment by the United States Circuit Court of Appeals in refusing a certificate of error, so as to permit an appeal, and the denial of certiorari by your Honors, was resented, not only by the local officials of Franklin Parish, but by many of the citizens thereof who regarded same as an unwarranted

interference by the United States Courts in a purely local matter.

Certain public officials and citizens of Franklin Parish fail to appreciate the fact that the provisions of the Constitution of the United States were enacted for the benefit and protection of all citizens, rich or poor, high or low, and that a judgment of the highest tribunal of our country should be received as the honest expression of disinterested judges conscientiously performing their official duties.

We respectfully submit that in refusing the change of venue, petitioner was denied his constitutional right to the fair and impartial trial to which he was entitled by the laws of the State of Louisiana (Section 15:142 and 15:143, Louisiana Revised Statutes and Article 1, Section 9, Louisiana Constitution) as well as by the Constitution of the United States.

We believe that the State of Louisiana, by the laches of its public officials, lost the right to retry petitioner because it permitted more than six months to elapse from the finality of the decree of Judge Dawkins granting the writ of habeas corpus to petitioner on January 10, 1955.

The six months from January 10, 1955 within which the State was ordered to retry petitioner, expired on July 10, 1955, and at no time did the State of Louisiana secure any order from any Court staying the effectiveness of Judge Dawkins' Judgment of January 10, 1955.

That the State of Louisiana itself entertained serious doubt of its right to retry petitioner more than six months after the date of Judge Dawkins' Judgment granting petitioner the writ of habeas corpus on January 10, 1955 (see Judge Dawkins' Judgment in Transcript of Record, United States Court of Appeals, 5th Circuit, No. 15,575, Vol. 3, page 690) is shown by the fact that on January 12, 1956 the State filed a motion in the District Court of the United States for the Western District of Louisiana, Monroe Division, in the said habeas corpus proceeding No. 4821 - Civil - asking that said Judgment be amended and extended so the State could retry petitioner.

The Court then amended its original Judgment so as to allow the State of Louisiana ninety days additional within which to retry petitioner.

Objection was timely made by counsel representing petitioner to the action of Judge Dawkins in granting this extension. (see Transcript of the Louisiana Supreme Court No. 43126, Vol. 1, page 58 b and c).

THE LACK OF PROPER REPRESENTATION OF PETITIONER BY THE CHIEF COUNSEL APPOINTED TO REPRESENT PETITIONER, MR. WARREN HUNT, AND THE ABANDONMENT OF PETITIONER BY MR. HUNT IN THE SUPREME COURT OF LOUISIANA, WHEN PETITIONER'S APPEAL WAS HEARD.

Under the Constitution of the State of Louisiana, Article 1, Section 9, it is provided that in all criminal prosecutions the accused has the right to have the assistance of counsel.

This provision is also contained in Section 15:142 of the Louisiana Revised Statutes.

The deprivation of the right of counsel and the right to the effective assistance of counsel constitutes a denial of due process of law under the Fourteenth Amendment to the Constitution of the United States of America.

In Powell v. Alabama, 287 U.S. 45, 77 L. Ed. 45, (1932) the Supreme Court of the United States decided that *"in a capital case, where the defendant is unable to employ counsel and is incapable adequately of making his own defense because of ignorance, feeblemindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary prerequisite of due process of law."*

Palmer v. Ashe, 432 U.S. 134, 96 L. Ed. 154 (1951); *Gibbs v. Burke*, 337 U.S. 773, 93 L. Ed. 1686 (1949); *Uveges v. Pennsylvania*, 335 U.S. 437, 93 L. Ed. 127 (1948); *Townsend v. Burke*, 334 U.S. 736, 92 L. Ed. 1690 (1948); *Wade v. Mayo*, 334 U.S. 672, 92 L. Ed. 1647 (1948). *In re Oliver*, 333 U.S. 257, 92 L. Ed. 682 (1948); *DeMeerleer v. Michigan*, 329 U.S. 663, 91 L. Ed. 584 (1947); *Hawk v. Olson*, 326 U.S. 271, 90 L. Ed. 61 (1945); *Rice v. Olson*, 324 U.S. 786, 89 L. Ed. 1307 (1945); *House v. Mayo*, 324 U.S. 42, 89 L. Ed. 739 (1945); *Tomkins v. Missouri*, 323 U.S. 485, 89 L. Ed. 409 (1945); *Williams v. Kaiser*, 323 U.S. 471, 89 L. Ed. 398 (1945); *Smith v. O'Grady*, 312 U.S. 329, 85 L. Ed. 859 (1941).

The Fourteenth Amendment requires more than the mere act of appointment.

It requires that appointed counsel render substantial aid and effective assistance to petitioner and it was the duty of this appointed counsel to make this representation effective before trial, during the trial and throughout the appeal.

In the case of *Avery v. Alabama*, 308 U.S. 444,450 (1940) the Court pointed out that not only did appointed counsel represent defendant in the trial court but in conjunction with other counsel, later employed, they carried an appeal to the State Supreme Court and then brought the matter to the United States Court for review.

As to incompetent counsel see *U.S. ex rel Hall v. Ragen*, 60 Fed. Supp. 820 (N.D. Ill. 1945) and *U.S. ex rel Foley v. Ragan*, 52 Fed. Supp. 265 (N.D. Ill. 1943 — see also *Annotations*, 93 L. Ed. 137 (1950); 84 L. Ed. 383; 96 L. Ed. 161; 94 L. Ed. 1193 - 146 ALR 369; 84 ALR 527; 38 ALR 2d 1401; 20 ALR 2d 988; 70 ALR 817; 42 ALR 1157.

Mr. Hunt, the chief counsel appointed to represent petitioner, not only neglected to show on the trial of petitioner in the lower Court that the deceased, at the time of the tragic happening, was violating the Louisiana law in making an unlawful arrest without a warrant for an alleged misdemeanor committed outside of his presence, but practically abandoned petitioner on his appeal before the Louisiana Supreme Court.

Had the fact that the deceased, at the time of the tragic happening, was engaged in making an unlawful arrest for a misdemeanor committed outside of his presence been brought out by Mr. Hunt on the trial of petitioner, it could

have had the effect of reducing the crime from that of murder to manslaughter under the Louisiana law.

The record will show that the typewritten brief belatedly prepared and sent by Mr. Hunt on behalf of petitioner to the Supreme Court of Louisiana the day the case was fixed for argument was totally inadequate.

Petitioner was entitled to the personal presence of Mr. Hunt, his chief counsel, in arguing this appeal before the Louisiana Supreme Court, which he was denied because of Mr. Hunt's absence.

We mention these facts not in a spirit of condemnation of Mr. Hunt, because Mr. Hunt, faced with a federal sentence of one year in a federal correctional institution and a fine of ten thousand dollars imposed by the United States District Court, Eastern District of Louisiana, for failure to file his 1953 income tax return, was certainly in no mental condition to properly handle petitioner's appeal and for this reason alone, petitioner was denied proper representation by counsel appointed by the Court to represent him.

Petitioner further alleges that he was denied due process of law guaranteed him under the Fourteenth Amendment to the United States Constitution because the record shows that the record is incomplete, because there was excluded therefrom the testimony of four witnesses called on the hearing of the motion for a change of venue (see Petitioner's Motion For New Trial, La. Transcript Vol. 1, No.

43126, pages 52 and 53 and see Bill of Exceptions No. 11, La. Supreme Court, Transcript No. 2, page 507).

The record shows that the testimony of these four witnesses, to wit: N. G. Lee, John T. O'Bryan, Roy McIntyre and Robert Garner, is missing from the record because of failure of the mechanical recording device to properly record the same, or because it was accidently or inadvertently obliterated from the machine's records.

Despite the per curiam of the learned trial judge to this Bill of Exceptions No. 11 (La. S. Ct. Transcript, Vol. 2, pages 507 and 508) as to his appreciation of the testimony of these witnesses, we respectfully submit that it was the duty of counsel appointed by the Court to represent petitioner to have this record properly supplemented before this transcript was completed and filed in the Supreme Court, and it was equally the duty of the trial judge to see that this was done.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Louisiana, commanding that Court to certify and send up to this Court, on a date to be designated, a full and complete transcript of the record and of all proceedings in the Fifth Judicial District Court for the Parish of Franklin, State of Louisiana, in the case No. 43,126 of the docket of the Supreme Court of the State of Louisiana, entitled "State of Louisiana, Appellee, vs. Joseph Sheffield, Appellant" to the end that this case may be reviewed and determined by this Court.

Petitioner prays that he be granted such other and further relief as may appear proper.

EUGENE STANLEY
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify under Rule 33(3-b) that service has been made on the State of Louisiana, respondent, of this petition for certiorari, by serving a copy hereof by mailing same to Hon. Jack P. F. Gremillion, Attorney General of the State of Louisiana, addressed to him at his office in the State Capitol, Baton Rouge, La. and deposited first class postage prepaid in the main office of the United States Post Office in the City of New Orleans, La.

New Orleans, La., May 1957.

EUGENE STANLEY
Attorney for
Joseph Sheffield,
Petitioner

(All papers and process in connection with this proceeding may be served upon Eugene Stanley, Attorney, at or by addressing same to his law office at 819 Whitney Bank Building, New Orleans, La.)